IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Crl.MC.No. 2971 of 2005()

CC.406/2004 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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PETITIONER: ACCUSED NOS.1 TO 5:

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1. MUHAMMED, S/O. VEERANKUTTY,
PULLANCHERI, CHERIKUNNUMMAL HOUSE,
KEEZHPARAMBU AMSOM, THRIKKALAYUR.

2. ASSAIN, S/O. KAMMUKUTTY,
PUNNOTH HOUSE, KEEZHPARAMBU AMSOM, THRIKKALAYUR.

3. ABDUL SALAM, S/O. AHAMMEDKUTTY,
VALIYAPARAMBATH, KEEZHPARAMBU AMSOM,THRIKKALAYUR.

4. ABDUL AZEEZ, S/O. MUHAMMED,
KANDAMKULANGARA, KEEZHPARAMBU AMSOM,THRIKALAYUR.

5. SUBAIR, S/O. MOHAMMED,
KANDAMKULANGARA, KEEZHPARAMBU AMSOM,THRIKKALAYUR.

BY ADV. SRI.K.A.JALEEL
SRI.T.T.MUHAMOOD

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY (SUB INSPECTOR OF POLICE,
AREACODE POLICE STATION -CRIME NO.13/2001 OF
AREACODE POLICE STATION) THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2.* PAZHANKAL ABDUL RAZAK
S/O MUHAMMED, AGED 50 YEARS
ALUNGAL HOUSE, THRIKKALAYOOR P.O
VALILLAPUZHA, AREACODE
MALAPPURAM DISTRICT

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(ADDL.R2 IS IMPLEADED AS PER ORDER DATED 8-8-2006 IN CRL.M.A. 3644/2006)

BY PUBLIC PROSECUTOR: SRI.K.A.AKBAR
SRI.O.V.MANIPRASAD

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C No. 2971 OF 2005

Dated this the 14th day of December 2006

ORDER

Petitioners face indictment in a prosecution under section 465 r/w 34 of the I.P.C. Proceedings were initiated against them on the basis of a private complaint which was referred to the police under Section 156 (3) of the Cr.P.C After investigation final report was filed. Cognizance was taken on the basis of such report. Petitioners have appeared before the learned Magistrate and claimed discharge under Section 239 of the Cr.P.C. The learned Magistrate overruling objections had framed charges against the petitioners under Section 465 read with 34 of the I.P.C The petitioners have not chosen to invoke the revisional jurisidiction of this Court . They have come to this Court with this petition with a prayer that powers under Section 482 of the Cr.P.C may be invoked in favour of the petitioners to quash the charges and the proceedings initiated against them

2. It us by now trite that the revisional jurisdiction of this Court is available for a person to challenge the order framing charge. As such challenge against framing charges, if upheld, would bring

about termination of proceedings. In that view of the matter the order framing charge cannot be held to an order which is interlocutory in nature as to attract the embargo under Section 397 (2) of the Cr.P.C. The position has been well settled, in various decisions including the decision in **Prabhakaran Vs. Excise Circle Inspector 1992 (2) KLT 860.** The decision has been reiterated in **Sreedharan Vs.State of Kerala 2005 (2) KLT 108** by a single judge of this Court. Indisputably therefore the order which is sought to be assailed in this petition under Section 482 of the Cr.P.C is one which is revisable.

3. When the Code provides other specific remedy, the inherent jurisdiction of this Court cannot certainly be invoked as a matter of course. Unless there are forensic exigencies and formidable compulsions justifying such a course, resort to the powers under Section 482 of the Cr.P.C cannot be made. This is evident from the decision in **Minakshi Bala Vs. Sudeer Kumar 1994 (4) SCC 142 .** There are no such circumstances or compulsions in this case obviously where the only contention raised is that the materials placed before the learned Magistrate do not justify the framing of charges under section 239 of the Cr.P.C. That is the only plea raised and no reliance is sought to be made on any other materials which are not placed before the learned

Magistrate.

4. The decision in **Muncipal Corporation of Delhi Vs. Ram kishan Rohtagi & others AIR 1983 SC 67** cautions courts against the temptation to invoke the powers under Section 482 of the Cr.PC when there is specific remedy provided elsewhere in the Court. In paragraph 6 of the decision it is held.

> *It is well settled that the inherent powers under Section 482 of the Cr.P.C of the present Code can be exercised only when no other remedy is available to the litigant and not when specific remedy is provided by the statute. Further the power being extraordinary one it has to be exercised sparingly.*

5. It is in any view of the matter I find absolutely no justification in the prayer to interfere with the order framing charges by invocation of the extraordinary inherent jurisdiction available to this Court under section 482 of the Cr.P.C.

6. This Crl.M.C. is in these circumstances dismissed.

R.BASANT, JUDGE

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